IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

J U D G M E N T
IN
S.B. Criminal Appeal No.140/2003

(1) Shakil S/o Kallu (2) Govinda S/o Hari Singh and
(3) Nazar S/o Aqladraj
Versus
State of Rajasthan through P.P.

Date of Judgment :::: 3rd of January, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri H.K. Sharma, Amicus Curiae
Shri Jagdish Lamba, P.P., for the State
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By the Court,

Three accused-persons, namely, Shakil S/o Kallu, Govinda S/o Hari Singh and Nazar S/o Aqladraj, have preferred this criminal appeal through Superintendent, Central Jail, Jaipur against their conviction and sentence passed by the Additional Sessions Judge, Dausa, vide judgment and order dated 25th of October, 2002, in Sessions Case No.75/1994, whereby all the three accused-persons were convicted and sentenced under Section 395, IPC, to seven years rigorous imprisonment and a fine of Rs.1000/- (Rupees one thousand); in default, to further undergo two months rigorous imprisonment and under Section 332, IPC, to one year's rigorous imprisonment and a fine of

Rs.100/- (Rupees one hundred); in default of payment of fine, to further undergo 15 days rigorous imprisonment. Both the sentences were ordered to run concurrently.

Exhibit P-6, a written report, was lodged by PW-5 Makhan Singh at Police Station Dausa, about the present incidence, wherein it was alleged that he was Conductor on Bus No. RJ-05-P-0175, belonging to Rajasthan State Road Transport Corporation and the Bus Driver was Mahendra Singh. On 26.5.1994 they took the bus from Soro to Jaipur. Their bus reached at Balaji Mod at about 11.00 in the night, where all the passengers and they took their meals, and thereafter they started from there at about 11.30 PM. When the bus crossed Sikandara Crossing then all of sudden five persons amongst passengers started shouting to stop the bus. Out of five persons, two were having weapons i.e. 'deshi katta' and knife. One person told the driver Mahendra Singh to stop the Bus otherwise he will be killed; thereafter the Bus was stopped, and one of them started driving the Bus. The other persons looted the passengers by showing knife and 'deshi katta'. The ornaments and cash-amount of the passengers were looted by all these persons. It was further alleged by PW-6, the Conductor of the Bus,

that the cash-amount of fare of Rs.2020/-, collected by him from passengers, and his personal amount of Rs.1370/- were also snatched from his custody. He was also beaten by these persons. Thereafter the Bus was stopped at Dausa Bypass at about 12.30 in the night. All the passengers were get down from the bus and thereafter they took the bus towards Jaipur side.

On the basis of this information, the police registered a case No.233/94 under Sections 147, 395, 307, 332, 353 and 365 of the IPC and under Section 3/25 of the Arms Act. Exhibit-7, F.I.R., was registered. The police investigated the matter and after completion of investigation the Investigating Officer filed a challan against four accused-persons, namely, Ramveer, Raju Khan, Shakil and Govinda, on 22.8.1994 in the Court of Chief Judicial Magistrate, Dausa. The case was committed to the Court of District & Sessions Judge, Dausa, who transferred the case for trial to the court of Additional Sessions Judge, Dausa. During the pendency of the trial, the police also submitted a 'titamba' challan against fifth accused, namely, Nazar on 16.10.2001 in the Court of Chief Judicial Magistrate, Dausa. The case of accused Nazar was also committed and was tried with the case of four accused-persons.

The learned trial court framed charge against accused-appellants, namely, Shakil S/o Kallu, Govinda S/o Hari Singh and Nazar S/o Aqladraj, for the offence under Sections 147, 395 or in the alternative 395/149, and 332, IPC. All the accused-persons denied the charge and claimed to be tried.

During the trial of the case, accused Raju Khan remained absent on 3.6.1997, therefore, he was declared absconded by the trial court. Another accused Ramveer was also declared absconded on 17.4.2001, but, subsequently on a report that he has died, the proceedings against him were dropped on 23.10.2002.

In support of its case, the prosecution examined 25 witnesses i.e. PW-1 to PW-25 and produced documentary evidence Exhibit-1 to Exhibit 54-A. Thereafter the statement of the accused-persons were recorded under Section 313, Cr.P.C., wherein they stated that they have falsely been implicated in the case. In defence, the accused-persons produced documentary evidence Exhibit D-1 and Exhibit D-2, the statements of the prosecution witnesses, namely, Jagdish Narain and Babu Lal, which were recorded under Section 161, Cr.P.C.

The learned trial court, after hearing the arguments from both the sides and after examining the record, convicted and sentenced the

accused-appellants, as mentioned above.

The learned counsel for the appellants, Shri H.K. Sharma, contended that the learned trial court has wrongly convicted and sentenced the accused-appellants as there was no sufficient and satisfactory evidence to prove the guilt against them. He contended that so far as accused Nazar is concerned, he was not arrested soon after the incidence and no identification parade was conducted against him. He further contended that so far as other two accused-persons, namely, Shakil and Govinda are concerned, although there is evidence of identification against them but some of the prosecution witnesses identified them and some of them could not identify them. He further contended that the articles were recovered vide recovery-memo Exhibit P-17 and Exhibit P-18, whereof there are two witnesses, namely, Surendra Singh and Abdul Rashid. PW-20 Surendra Singh was declared hostile, whereas another witness Abdul Rashid was not examined by the prosecution for the reasons best known to it. He also contended that Amar Singh, the prosecution witness, was also not examined in the case. In these circumstances, the learned trial court was not justified in convicting the accused-appellants for the above offence, therefore, he prayed that the

judgment and order passed by the learned trial court be set aside and the accused-appellants be acquitted. He further contended that accused Shakil is on bail but before grant of bail, he remained in jail for about five years. So far as another accused Govinda and Nazar are concerned, although they were granted bail but they have not submitted their bail bonds and sureties, therefore, they remained in jail for more than six years, therefore, in case this court does not agree with his contention for their acquittal then at-least their sentence of imprisonment be reduced to the period of sentence of imprisonment already undergone by them.

The learned Public Prosecutor supported the judgment and order passed by the learned trial court and contended that looking to the facts and circumstances as well as the nature of offence and the evidence available on the record, the conviction of the accused-appellants is liable to be upheld. He also contended that looking to the nature of the charge and the finding of the trial court, the sentence of imprisonment awarded by the trial court should not be reduced to the period of sentence of imprisonment already undergone by the accused-persons.

I have heard the learned counsel for both the

parties in detail and minutely scanned the impugned judgment as well as the record of the trial court.

Exhibit P-6 is the written-report, which was lodged by eye-witness Makhan Singh, who was Conductor of the Bus in which the incident took place. He has given the details of the incidence from which it appears that it was a case of dacoity committed by accused-persons, who were five in number and were armed with deadly weapons. The accused-persons looted the passengers, who were travelling in the bus. Names of accused Shakil, Ramveer, Raju, Govinda and Nazar have also been mentioned in the written-report (Exhibit P-6). The matter was investigated. The accused-persons were arrested. The identification parade of accused Shakil and Govinda took place in the matter and they were also identified by the prosecution witnesses during their examination before the court during the trial of the case. PW-1 Jagdish Narain Sharma, who was travelling in the Bus on 26.5.1994, has narrated the entire story of incidence. He has identified accused Shakil, Govinda and Nazar, on 16.1.2002 in the court when his statement was recorded. PW-2 Kamla Sharma, who was also travelling in the Bus No. RJ-05-P-0175, has proved Exhibit P-1, the identification parade report. Exhibit-P-2 is the

memo of identification parade conducted by the Magistrate. She has also identified her ornaments, which were looted and snatched by the accused in the Bus on the date of the incident. PW-3 Mahesh Chand Sharma, who was also travelling in the bus, has also stated that accused-persons were taking their names as Nazar, Govinda, Shakil, Ramveer and Raju. He identified the accused Govinda and stated that accused Govinda snatched his wrist-watch and Rs.345/-. He also proved Exhibit P-3, the identification proceedings. He also proved Exhibit P-4, the memo relating to recovery of his ring, purse, amount of Rs.2900/- and Rs.70/-. He also proved the site-plan Exhibit P-5. PW-4 Babu Lal Rana also identified the accused-appellants Shakil, Govinda and Nazar in the court on 17.1.2002 when his statement was recorded. He also proved Exhibit P-5, the site-plan. PW-5 Makhan Singh, the conductor of the Bus and the informant, also stated that accused-persons were taking names of each other as Govinda, Shakil, Raju, Ramveer and Nazar. He proved the written-report (Exhibit P-6) and contents of it. He also narrated the story of the incidence and the manner in which the passengers were looted by the accused-persons. He also proved the FIR (Exhibit P-7) duly signed by him as well as the site-plan (Exhibit

P-5). He identified accused Shakil in the court and stated that he snatched his amount and he was armed with 'deshi katta' Exhibit P-1, the memo of identification parade, was also proved by him. PW-6 Shakuntla, PW-7 Smt. Asha Rajawat, PW-8 Tara Chand and other prosecution witnesses have also stated about the occurrence and have proved the recovery memos of different articles belonging to the passengers, which were recovered at the instance of the accused-persons. PW-23 Chandra Prakash Shrimali, the ACJM, who conducted the identification parade, was also examined and gave his statement in detail relating to identification of the accused-persons by the prosecution witnesses. PW-24 Narain Sahai, who was the S.H.O., and In-charge of Kotwali, was also examined, who proved the documentary evidence of the prosecution and identified the signatures of Amarjeet Singh, the Investigating Officer, who was not available as he had gone to Canada, but his signatures were proved by PW-24 Narain Sahai. It is also relevant to mention that when accused-persons ran with the bus, were caught-hold of at Jaipur and accused Shakil and Govinda were arrested at the spot with deadly weapons and a separate FIR No.105/94 was registered against accused-persons at Police Station Adarsh Nagar, Jaipur, for

the offence under Sections 147, 148, 149, 307 of the IPC. However, in the said incident, the accused Shakil was convicted and sentenced under Section 3/25 and accused Govinda under Sections 4/25 of the Indian Arms Act by the Additional District & Sessions Judge No.1, Fast Track, Jaipur City, Jaipur, in Sessions Case No.129/2001, vide judgment and order dated 6th of March, 2002.

The learned trial court has thoroughly considered the oral and documentary evidence produced by the prosecution in the present case and found that there is sufficient and link evidence available against accused-persons and consequently a finding was recorded against accused-appellants. The trial court has considered the statements of the prosecution witnesses as well as the documentary evidence, in detail, and no illegality or perversity has been pointed out by the learned counsel for the appellants in the finding of the learned trial court. The finding of the learned trial court is based on evidence and I do not find any illegality or perversity in it. Therefore, I do not see any justification to interfere in the order of conviction of the accused-appellants recorded by the trial court.

So far as reduction of sentence of imprisonment

is concerned, I am of the view that looking to the nature of the charge and the offence involved in the present case, the accused-appellants are not entitled to any concession in the sentence of imprisonment also.

Consequently, I do not find any merit in this appeal and the same is accordingly dismissed. Accused-appellant Shakil is on bail and he is directed to surrender immediately before the trial court, who will take him into custody and send him to jail to serve out the remaining sentence of imprisonment. In case the accused Shakil does not surrender, then the trial court shall take necessary steps to take him into custody and to send him into jail to serve out the remaining sentence of imprisonment. The accused Govinda and Nazar were also granted bail by this Court, but from the report of the Superintendent, Central Jail, Jaipur dated 1.6.2006 it appears that they did not submit bail bonds and surety bonds, therefore, they were not released. In case they were released and did not serve the necessary sentence of imprisonment then necessary steps will be taken in this regard also.

(Narendra Kumar Jain), J.

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